THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.1504 of 1998
Date: 11-04-2007

Between:
S.L.Nagaraju

Petitioner

And

Andhra Pradesh State Electricity Board,
rep.by it's Secretary, Vidyut Soudha,
Somajiguda, Hyderabad and two others.

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.1504 of 1998

ORDER:

1. The present writ petition has been instituted aggrieved by a show cause notice issued on 19-12-1997 by the Superintendent Engineer, Operation, Ananthapur of the former APSEB to show cause as to why the order of promotion issued in favour of the writ petitioner on 22.08.1996 promoting him to the cadre of U.D. Clerk be not recalled reverting the writ petitioner back as L.D. Clerk.

2. It is not in dispute that the writ petitioner is not a qualified, for, he has not passed the requisite departmental examinations needed for promotion to the post of U.D. Clerk. But however, in terms of Regulation 41 of the Andhra Pradesh State Electricity Board Service Regulations, which reads as follows:

> *"No regulation made in exercise of the powers conferred by sub-section © of Section 79 of the Electricity (supply) Act, 1948 shall be construed to limit or abridge the power of the Board to deal with the case of any person serving under the Board in such manner as may appear to it to be just and equitable."*

the writ petitioner has been granted exemption from passing the accounts test for subordinate officers part-1 and the Government technical examination in Accountancy by lower grade. Pursuant to this exemption, the case of the writ petitioner came to be considered and he had been granted promotion as U.D.Clerk on 22.8.1996. But however, the order of promotion has specifically

noted and cautioned that the same is subject to the result in Civil Appeal Nos.180-181 of 1984 pending before the Supreme Court. The Supreme Court had finally decided the Civil Appeal Nos.180-181 of 1984 by it's judgment dated 27th February,1996 and the Supreme Court has specifically pointed out that they uphold the relaxation from passing the tests granted to the appellants by the Board in the year 1981. After having held so, the Supreme Court went on to observe as under:

> *"We make it clear that we are not upholding the order of the Board on the interpretation of the Rule but keeping in view the time lapse and also to obviate the injustice which is likely to be caused to the appellants in case the relaxation is withdrawn today."*

3. The above observation had come to be made by the Supreme Court because their Lordships were not approving the interpretation placed by a Divisional Bench of this court on Regulation 41 of the A.P.S.E.B. Regulations. In the concluding portion of the judgment, the Supreme Court has clearly pointed out as under:

> *" We, therefore, set-aside the judgment of the Division Bench of the High Court so far as the relief part is concerned and uphold the order of the Board granting relaxation to the appellants from passing the test. The appeals are allowed to the above extent."*

Thus the relaxation granted by the Electricity Board in favour of the appellants in Civil Appeal Nos.180-181 of 1984 has been upheld by the Supreme Court.

4. When once the regulations contain the power to grant relaxation for the purpose of obviating individual hardship that is likely to be caused and as a result of exercise of such power, relaxation has been granted, the same cannot be faulted so long as it is carried out rationally and properly. The impugned show

cause notice has not spelt out as to why the power of relaxation exercised earlier and the resultant relaxation granted by the APSEB in favour of the writ petitioner, is irrational or bad. The Electricity Board has been vested with the power as already pointed out and placed supra. If such an exercise of power is vitiated for any valid or tenable reasons, it could possibly afford an opportunity for reexamination and reconsideration. In the absence of any vitiating factor the very grant of exemption which is the result of exercise of power available under Regulation 41 cannot be put in issue. I therefore, do not find any valid basis for issuance of the impugned show cause notice by the Electricity Board.

5. Normally, while exercising power under Article 226 of the Constitution of India, the courts do not interfere with the show cause notices and would allow the proposed action to emanate and any corrective steps to be taken would be examined only after a final order is passed. Since the present show cause notice cannot be attributed as without any power, it cannot be quashed for lack of power. But however, the present show cause notice appears to have been issued upon a misconception of the fact that the Supreme Court while deciding Civil Appeal Nos.180-181 of 1984 has struck down the orders passed by the Board granting exemptions/relaxations in favour of the appellants before the Supreme Court. The observations made by the Supreme Court that they are not upholding the order of the Board on the interpretation of the rule, are totally misconstrued by the respondents as if the Supreme Court had not upheld the relaxation granted at all. The respondents have erroneously construed that the judgment of the Division Bench of this court was upheld whereas the Supreme Court has set aside the 2 it had upheld the order of the Board granting relaxation to the appellants from passing the test.

6. Due to the misconception of the directions issued by the Supreme Court in

Civil Appeal Nos.180-181 of 1984, the present show cause notice has been issued. Therefore, I consider it appropriate to quash the impugned show cause notice, but however, that shall not preclude the respondents to exercise power available with them for recalling the grant of relaxation if the circumstances warrant such an exercise.

7. The writ petition is allowed, but however, without costs.

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NOOTY RAMAMOHANA RAO,J

11-04-2007
Stp